



ENTERED
02/01/2021

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**IN RE: BOUCHARD TRANSPORTATION
CO., INC., *et al.*,¹**

Debtors.

Chapter 11

Case No. 20-34682 (DRJ)

(Jointly Administered)

**STIPULATION AND AGREED ORDER BY AND AMONG THE DEBTORS
AND MARKEL INTERNATIONAL INSURANCE CO. LTD**

This stipulation and agreed order ("Stipulation and Order") is made and entered into by and among Bouchard Transportation Co., Inc. ("BTC") and certain of its subsidiaries and affiliates (collectively, the "Debtors"), debtors-in-possession in the above-captioned chapter 11 cases, and Markel International Insurance Co. Ltd. ("Markel") (each of Markel and the Debtors, a "Party" and collectively, the "Parties"). The Parties hereby stipulate and agree as follows.

RECITALS

- A. WHEREAS, on June 10, 2020, Hull & Machinery No. B080121370M20 (the "H&M Policy") was issued to Debtor, Bouchard Transportation Co., Inc., with Markel listed as Lead Underwriter;
- B. WHEREAS, the H&M Policy includes the following provision: "30 days' notice of cancellation at any time by lead underwriter;"
- C. WHEREAS, on September 28 and 29, 2020, the Debtors commenced these chapter 11 cases;

¹ Due to the large number of Debtors in these chapter 11 cases, a complete list of the Debtor entities and last four digits of their federal tax identification numbers is not provided herein. A complete list may be obtained on the website of the Debtors' claims and noticing agent at <https://cases.stretto.com/bouchard>. The location of the Debtors' service address is: 58 South Service Road, Suite 150, Melville, New York 11747.

- D. WHEREAS, Markel, as Lead Underwriter on the H&M Policy, issued a Notice of Cancellation for the H&M Policy on October 20, 2020, which notice was then withdrawn and revoked by Markel, as Lead Underwriter on the H&M Policy, on November 24, 2020;
- E. WHEREAS, on November 30, 2020, Markel, as Lead Underwriter on Policy Nos. B080121370M20 and B080121390M20, filed “Markel International Insurance Co. Ltd.’s Motion for Relief from the Automatic Stay to Authorize Cancellation of Certain Insurance Policies Issued to Debtors” [Docket No. 265] (the “Motion”) for entry of an order providing relief from the automatic stay to authorize Markel to cancel the H&M Policy, all as more fully set forth in the Motion;
- F. WHEREAS, the Debtors filed an objection [Docket No. 357] to the Motion and have taken the position that the automatic stay, imposed upon Debtors’ institution of this bankruptcy proceeding, precludes Markel’s right to issue a Notice of Cancellation for the H&M Policy and that cause does not exist to lift the automatic stay;
- G. WHEREAS, in the Motion, Markel takes the position that the automatic stay does not affect its right to issue a Notice of Cancellation for the H&M Policy. Alternatively, Markel asserts that cause exists for the Court to grant relief from the automatic stay such that Markel may issue a Notice of Cancellation for the H&M Policy upon 30 days’ notice;
- H. WHEREAS, Markel acknowledges and agrees that, as of the date hereof, the Debtors are current with respect to any and all premium payment obligations in respect of the H&M Policy;
- I. WHEREAS, Markel and Debtors have engaged in arms’ length negotiations regarding the terms and conditions of go-forward coverage under the H&M Policy;
- J. WHEREAS, as a result of such negotiations, Markel and the Debtors have agreed to amend the H&M Policy on the terms and conditions set forth in the amendment attached hereto as **Exhibit 1** (the “Amendment”);
- K. WHEREAS, the Parties each consent to entry of this Stipulation and Order by the Court;

THEREFORE, IT IS HEREBY STIPULATED AND AGREED, AND UPON APPROVAL BY THE COURT OF THIS STIPULATION AND ORDER, IT IS SO ORDERED as follows:

1. The above recitals are incorporated by reference into this Stipulation and Order with the same force and effect as if fully set forth hereinafter.
2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This Court may enter a final order consistent with Article III of the United States Constitution. Venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. Subject to entry of this Stipulation and Order, the Amendment shall be deemed effective.
4. Subject to the terms and conditions of the H&M Policy, including the Amendment thereto, as well as the terms and conditions of this Stipulation and Order, Markel is authorized, without the need for any further action by this Court, to issue a Notice of Cancellation in accordance with and with respect to the H&M Policy, which Notice of Cancellation shall, for the avoidance of doubt, provide 30 days' notice to Bouchard Transportation Co., Inc. of any cancellation. The Notice of Cancellation shall be provided to Bouchard Transportation Co., Inc., served upon co-counsel to the Debtors, Kirkland & Ellis LLP, 300 North LaSalle Street, Chicago, Illinois 60654, Attn: Ryan Bennett, and filed on the docket of the above-captioned chapter 11 cases. Without limiting the foregoing in any respect, the form and manner of any such Notice of Cancellation shall be as and to the extent set forth in the H&M Policy. Markel is granted relief from the automatic stay to issue a Notice of Cancellation for the H&M Policy solely as and to the extent set forth herein.
5. Subject to the effectiveness of the Amendment and the entry of this Stipulation and Order, the Motion shall be deemed withdrawn without prejudice to either Party to seek appropriate relief from the Court following the entry of this Stipulation and Order.
6. Except as otherwise set forth herein, the Parties' respective rights, claims, counterclaims, defenses, and the like are fully preserved and reserved.

7. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Signed: February 01, 2021.



DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

STIPULATED AND AGREED TO THIS 1ST DAY OF FEBRUARY, 2021:

Houston, Texas
February 1, 2021

/s/ Matthew D. Cavanaugh

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Exhibit 1

Form of Amendment

TERMS AND CONDITIONS FOR CONTINUATION OF BOUCHARD H & M POLICY

Coverage is hereby reinstated with effect from date to be agreed by Markel on the basis the policy is only to pay claims in respect of Actual Total Loss only, General Average and Salvage and Sue and Labor in respect of non-classed vessels.

- Excluding Additional Perils (Inchamaree) in respect of non-classed vessels.
- Policy deductible of USD 500,000 each vessel to apply to claims in respect of Actual Total Loss only, General Average and Salvage and Sue and Labor in respect of non-classed vessels.
- Coverage shall only revert to American Institute Hull Clauses as per slip for each vessel separately with effect from date of BV Class being in place.
- Markel to be notified of each re-classification to BV by Willis in writing on a weekly basis, on each Friday of that week.

The following warranties are in force. Failure to comply with any warranty will result in no cover being given:

- BV Class 'Document of Compliance' to remain in effect at all times.
- Once a vessel becomes BV classed it is warranted the vessel remains classed and classed maintained and lines 196-209 of American Institute Hull Clauses remain in effect.
- Remote office management follow up survey by Simon Groves of Inserve to be carried out by 28th February 2021 at client cost and all recommendations and/or requirements to be complied with within surveyors timescales, any of which are to be mutually discussed and agreed between Bouchard and Simon Groves.
- Underwriters reserve the right to inspect any vessel at any time by surveyor to be agreed by Markel at client cost. All recommendations and/or requirements to be complied with within surveys timescales.
- Those unclassified Vessels for which coverage shall revert to American Institute Hull Clauses as per slip for each vessel separately to be classed by BV no later than 60 days which may be extended by Markel
- All unclassified vessels are not to navigate without the prior approval from Markel, however vessels have leave to shift within port limits and/or to move in accordance with Bouchard's Emergency Response Plan.
- International Group P&I Club Cover maintained at all times on all vessels.
- Monthly operations meetings between Markel, Willis and Bouchard.
- Joint Hull Reactivation Warranty JH2009/002 to apply, it is agreed that the reactivation survey may be carried out by BV class surveyor (and US Coast Guard if applicable).
- No release given to yard for any vessel in their care, custody or control.
- Vessels not under repair, other than for routine maintenance.

30 days' notice of cancellation at any time by lead underwriter.

Subject to the following prior to any coverage being reinstated:

- Confirmation of no known or reported losses that may have given rise to a claim under this policy; and
- Any and all court authorization necessary to allow 30 days' notice of cancellation at any time by lead underwriter received no later than 1 February 2021

All other terms and conditions remain unaltered.

All underwriters to agree.